

Pro Se 15 (Rev. 12/16) Complaint for Violation of Civil Rights (Non-Prisoner)

## UNITED STATES DISTRICT COURT

for the

8th District of Nebraska

Omaha Division

PD # 8057839

Case No.

8:20CV405  
(to be filled in by the Clerk's Office)

Edward A DeVance

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

City of Omaha

Schmaderer, Todd, Chief of Police

Gardner, Sean #1896, Police Officer

Checksfield, Kevin #1898, Police Officer

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

Jury Trial: (check one) ☒ Yes ☐ No

## COMPLAINT FOR VIOLATION OF CIVIL RIGHTS

(Non-Prisoner Complaint)

## NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

**I. The Parties to This Complaint****A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

|                  |                    |              |                 |
|------------------|--------------------|--------------|-----------------|
| Name             | Edward A DeVance   |              |                 |
| Address          | 9705 Ogden Cir     |              |                 |
|                  | Omaha              | Ne           | 68134           |
|                  | <i>City</i>        | <i>State</i> | <i>Zip Code</i> |
| County           | Douglas            |              |                 |
| Telephone Number | 402-612-2799       |              |                 |
| E-Mail Address   | vannathome@cox.net |              |                 |

**B. The Defendant(s)**

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

## Defendant No. 1

|  |                |              |                 |
|--|----------------|--------------|-----------------|
| Name   | City of Omaha  |              |                 |
| Job or Title <i>(if known)</i>   |                |              |                 |
| Address  | 1819 Farnam St |              |                 |
|  | Omaha          | NE           | 68183           |
|  | <i>City</i>    | <i>State</i> | <i>Zip Code</i> |
| County   | Douglas        |              |                 |
| Telephone Number   | 402-444-7000   |              |                 |
| E-Mail Address <i>(if known)</i>   |                |              |                 |
| <input type="checkbox"/> Individual capacity <input checked="" type="checkbox"/> Official capacity |                |              |                 |

## Defendant No. 2

|  |                            |              |                 |
|--|----------------------------|--------------|-----------------|
| Name   | Todd Schmaderer            |              |                 |
| Job or Title <i>(if known)</i>   | Chief of Police            |              |                 |
| Address  | 505 So 15 <sup>th</sup> st |              |                 |
|  | Omaha                      | NE           | 68102           |
|  | <i>City</i>                | <i>State</i> | <i>Zip Code</i> |
| County   | Douglas                    |              |                 |
| Telephone Number   | 402-444-5600               |              |                 |
| E-Mail Address <i>(if known)</i>   |                            |              |                 |
| <input type="checkbox"/> Individual capacity <input checked="" type="checkbox"/> Official capacity |                            |              |                 |

## Defendant No. 3

|                                  |                            |              |                 |
|----------------------------------|----------------------------|--------------|-----------------|
| Name                             | Sean Gardner #1896         |              |                 |
| Job or Title <i>(if known)</i>   | Police Officer             |              |                 |
| Address                          | 505 So 15 <sup>th</sup> St |              |                 |
|                                  | Omaha                      | NE           | 68102           |
|                                  | <i>City</i>                | <i>State</i> | <i>Zip Code</i> |
| County                           | Douglas                    |              |                 |
| Telephone Number                 | 402-444-5600               |              |                 |
| E-Mail Address <i>(if known)</i> |                            |              |                 |

☒ Individual capacity      ☐ Official capacity

## Defendant No. 4

|                                  |                            |              |                 |
|----------------------------------|----------------------------|--------------|-----------------|
| Name                             | Kevin Checksfield #1898    |              |                 |
| Job or Title <i>(if known)</i>   | Police Officer             |              |                 |
| Address                          | 505 So 15 <sup>th</sup> St |              |                 |
|                                  | Omaha                      | NE           | 68102           |
|                                  | <i>City</i>                | <i>State</i> | <i>Zip Code</i> |
| County                           | Douglas                    |              |                 |
| Telephone Number                 | 402-444-5600               |              |                 |
| E-Mail Address <i>(if known)</i> |                            |              |                 |

☒ Individual capacity      ☐ Official capacity
**II. Basis for Jurisdiction**

Under 42 U.S.C. § 1983, you may sue state or local officials for the "deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws]." Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against *(check all that apply)*:

- ☐ Federal officials (a *Bivens* claim)
- ☒ State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the "deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws]." 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

First, Fourth, Eighth, and Fourteenth Amendments

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

- D. Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

Officers Gardner and Checksfield arrested me for exercising my First Amendment right for filming from a public area/loitering, and my Fourth Amendment right for unconstitutional search and seizure of my person. For use of excessive force and requiring me to post bail for a ticketable offense, my Eighth Amendment right was violated. My Fourteenth Amendment was violated because of Social Security Act etc. These officers report to Chief of Police Schmaderer. The Chief of Police works for the City of Omaha.

---

### III. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. Where did the events giving rise to your claim(s) occur?  
On a city of Omaha public street located 2400 Avenue J

- B. What date and approximate time did the events giving rise to your claim(s) occur?  
August 31, 2020 approximately 11:00AM

- C. What are the facts underlying your claim(s)? *(For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)*

I am a 65 year old black man who was walking and recording from a public street, 2400 Avenue J, Omaha, NE, 68110. I was approached by Officers Gardner and Checksfield who asked me to move on. I advised I was on a public street and exercising my 1<sup>st</sup> Amendment Right to record. They advised me of loitering statute 28-914, I responded I had a purpose and I was not loitering. Officer Checksfield responded it was good I had a purpose, but I still needed to move on. I refused, because at no time did I set foot on prison property, and I was only recording for a short period of time. I was arrested 1:16 minutes after both officers arrived, clearly insufficient time to investigate or formulate a loitering charge which they did not witness. Secondly, they conducted an unconstitutional search of my person and seized my property. Handcuffs were put on so tightly causing me to complain of dizziness because of a heart condition, my hands were swollen for two days. A hasty decision was made by the officers after seeing I was an African American male to arrest me with no due process, and no further investigation. The entire incident was recorded by me with two devices.

---

#### **IV. Injuries**

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

None

---

#### **V. Relief**

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

I am seeking \$175,000 in exemplary/punitive damages for willful and egregious violations of my civil rights mentioned above. The basis for this claim is pain and suffering, mental anguish and humiliation, along with a deterrent to discourage racial profiling against African American citizens.

## VI. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

### A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 10-7-2020

Signature of Plaintiff

EA DeVance Edward A DeVance

Printed Name of Plaintiff

Edward A. DeVance

### B. For Attorneys

Date of signing: \_\_\_\_\_

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Pro Se 15 (Rev. 12/16) Complaint for Violation of Civil Rights (Non-Prisoner)

---

Address

---

---

*City*

---

*State*

---

*Zip Code*

Telephone Number

---

E-mail Address

---



## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

DeVance, Edward A.

(b) County of Residence of First Listed Plaintiff Douglas

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Pro Se

**DEFENDANTS**City of Omaha, OPD, Schmaderer, Todd, Chief of Police  
Gardner, Sean #1896 Officer, Checksfield, Kevin #1898, OfficerCounty of Residence of First Listed Defendant Douglas

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question  
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

| CONTRACT  | TORTS  | FORFEITURE/PENALTY  | BANKRUPTCY  | OTHER STATUTES  |
|---|--|---|---|---|
| <input type="checkbox"/> 110 Insurance<br><input type="checkbox"/> 120 Marine<br><input type="checkbox"/> 130 Miller Act<br><input type="checkbox"/> 140 Negotiable Instrument<br><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment<br><input type="checkbox"/> 151 Medicare Act<br><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Vetcrans)<br><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits<br><input type="checkbox"/> 160 Stockholders' Suits<br><input type="checkbox"/> 190 Other Contract<br><input type="checkbox"/> 195 Contract Product Liability<br><input type="checkbox"/> 196 Franchise | <b>PERSONAL INJURY</b><br><input type="checkbox"/> 310 Airplane<br><input type="checkbox"/> 315 Airplane Product Liability<br><input type="checkbox"/> 320 Assault, Libel & Slander<br><input type="checkbox"/> 330 Federal Employers' Liability<br><input type="checkbox"/> 340 Marine<br><input type="checkbox"/> 345 Marine Product Liability<br><input type="checkbox"/> 350 Motor Vehicle<br><input type="checkbox"/> 355 Motor Vehicle Product Liability<br><input type="checkbox"/> 360 Other Personal Injury<br><input type="checkbox"/> 362 Personal Injury - Medical Malpractice<br><b>PERSONAL INJURY</b><br><input type="checkbox"/> 365 Personal Injury - Product Liability<br><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability<br><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability<br><b>PERSONAL PROPERTY</b><br><input type="checkbox"/> 370 Other Fraud<br><input type="checkbox"/> 371 Truth in Lending<br><input type="checkbox"/> 380 Other Personal Property Damage<br><input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881<br><input type="checkbox"/> 690 Other<br><b>LABOR</b><br><input type="checkbox"/> 710 Fair Labor Standards Act<br><input type="checkbox"/> 720 Labor/Management Relations<br><input type="checkbox"/> 740 Railway Labor Act<br><input type="checkbox"/> 751 Family and Medical Leave Act<br><input type="checkbox"/> 790 Other Labor Litigation<br><input type="checkbox"/> 791 Employee Retirement Income Security Act<br><b>IMMIGRATION</b><br><input type="checkbox"/> 462 Naturalization Application<br><input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 422 Appeal 28 USC 158<br><input type="checkbox"/> 423 Withdrawal 28 USC 157<br><b>PROPERTY RIGHTS</b><br><input type="checkbox"/> 820 Copyrights<br><input type="checkbox"/> 830 Patent<br><input type="checkbox"/> 835 Patent - Abbreviated New Drug Application<br><input type="checkbox"/> 840 Trademark<br><b>SOCIAL SECURITY</b><br><input type="checkbox"/> 861 HIA (1395ff)<br><input type="checkbox"/> 862 Black Lung (923)<br><input type="checkbox"/> 863 DIWC/DIWW (405(g))<br><input type="checkbox"/> 864 SSID Title XVI<br><input type="checkbox"/> 865 RSI (405(g))<br><b>FEDERAL TAX SUITS</b><br><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)<br><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 375 False Claims Act<br><input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))<br><input type="checkbox"/> 400 State Reapportionment<br><input type="checkbox"/> 410 Antitrust<br><input type="checkbox"/> 430 Banks and Banking<br><input type="checkbox"/> 450 Commerce<br><input type="checkbox"/> 460 Deportation<br><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations<br><input type="checkbox"/> 480 Consumer Credit<br><input type="checkbox"/> 485 Telephone Consumer Protection Act<br><input type="checkbox"/> 490 Cable/Sat TV<br><input type="checkbox"/> 850 Securities/Commodities/Exchange<br><input type="checkbox"/> 890 Other Statutory Actions<br><input type="checkbox"/> 891 Agricultural Acts<br><input type="checkbox"/> 893 Environmental Matters<br><input type="checkbox"/> 895 Freedom of Information Act<br><input type="checkbox"/> 896 Arbitration<br><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision<br><input type="checkbox"/> 950 Constitutionality of State Statutes |

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
42 USC 1983

Brief description of cause:

Violation of my 1st, 4th, 8th &amp; 14th Amendment Rights, to free press with arrest

**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$**

CHECK YES only if demanded in complaint:

**JURY DEMAND:** ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

**FOR OFFICE USE ONLY**

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE